

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

LENNIE T. DAVIDSON,

Plaintiff,

Civil No. 10-575-BR

v.

ORDER

MAX WILLIAMS, et al.,

Defendants.

BROWN, Judge.

Pro se Plaintiff filed a civil rights Complaint pursuant to 42 U.S.C. § 1983 in which he challenges the conditions of his confinement. Currently before this court is defendants' Unenumerated 12B Motion to Dismiss (#25) based on plaintiff's alleged failure to exhaust his administrative remedies.

The Ninth Circuit has determined that inmates are entitled to notice under *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998) before being required to respond to a motion to dismiss for failing to exhaust administrative remedies. See *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003). Due to a clerical error,

Plaintiff was not previously provided this notice. Accordingly, Plaintiff is ADVISED as follows:

NOTICE - WARNING

***This Notice is Required to be Given
to You by the Court***

Defendants have filed an unenumerated Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b) based on your alleged failure to exhaust your administrative remedies. Such a motion, if granted, will end your case.

When a party you are suing makes such a motion to dismiss for failure to exhaust that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says or make general allegations about what you may be able to prove. Instead, you must set out specific facts in declarations or other authenticated documents, that contradict the facts shown in the defendants' declarations and documents. If you do not submit your own evidence in opposition, and the defendants' evidence establishes that you did not exhaust your administrative remedies, defendants' motion to dismiss will be granted and your case will be dismissed.

CONCLUSION

The Court is in receipt of Plaintiff's Response to Defendants' Motion. Nevertheless, Plaintiff is allowed until February 11, 2011 to submit any additional evidence in response to defendants' Motion to Dismiss (#25). Defendants are allowed until February 25, 2011, to respond. Defendants' Unenumerated 12(B) Motion to Dismiss is taken UNDER ADVISEMENT February 25, 2011.

IT IS SO ORDERED

DATED this 20th day of January, 2011.

/s/ Anna J. Brown

ANNA J. BROWN

United States District Judge